

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

**THOMAS F. WEST AND
DIANA M. WEST,**

Plaintiffs,

vs.

BANK OF AMERICA, N.A.,

Defendant.

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Case No.: 6:15-cv-00058-KEW

ANSWER TO AMENDED COMPLAINT

COMES NOW Defendant Bank of America, N.A. (“BANA”), by and through its undersigned counsel, and hereby files its Answer to Plaintiffs Thomas F. West and Diana M. West, (collectively, “Plaintiffs”) Amended Complaint and Demand for Jury Trial (“Amended Complaint”).

For its response to the enumerated paragraphs of Plaintiffs’ Amended Complaint, BANA states as follows:¹

FACTS

1. BANA admits the allegations of Paragraph 1.
2. The allegations of Paragraph 2 constitute legal conclusions to which no response is required.

¹ Plaintiffs failed to number the paragraphs in their Complaint. This Answer sets forth BANA’s response to the specific paragraphs in the Complaint consistent with the numbering added to the copy of Complaint attached hereto as Exhibit A.

FACTUAL ALLEGATIONS

3. The allegations of Paragraph 3 constitute legal conclusions to which no response is required. To the extent a response is required, BANA denies the allegations of Paragraph 3 and demands strict proof thereof.

4. BANA admits that was the servicer for the mortgage loan that is the subject of this action, but denies that it took any unlawful collection activity.

5. BANA denies the allegations of Paragraph 5 and demands strict proof thereof.

6. BANA denies the allegations of Paragraph 6 and demands strict proof thereof.

COMPLAINT

7. Paragraph 7 does not contain any allegations and thus no response is required.

8. BANA is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 8 and therefore those allegations are denied.

9. BANA denies the allegations of Paragraph 9 and demands strict proof thereof.

10. BANA denies the allegations of Paragraph 10 and demands strict proof thereof.

11. BANA denies the allegations of Paragraph 11 and demands strict proof thereof.

12. BANA denies the allegations of Paragraph 12 and demands strict proof thereof.

13. BANA states that the written documents referenced in Paragraph 13 speak for themselves. To the extent a response is required, BANA denies the allegations of Paragraph 13 and demands strict proof thereof.

14. BANA denies the allegations of Paragraph 14 and demands strict proof thereof.

15. BANA denies the allegations of Paragraph 15 and demands strict proof thereof.

RESTATEMENT OF CAUSES OF ACTION

16. The allegations of Paragraph 16 constitute legal conclusions to which no response is required. To the extent a response is required, BANA denies that Plaintiffs are entitled to any relief under the statutes cited in Paragraph 16.

17. The allegations of Paragraph 17 constitute legal conclusions to which no response is required. To the extent a response is required, BANA denies that Plaintiffs are entitled to any relief under the statutes cited in Paragraph 17.

18. BANA states that the written documents referenced in Paragraph 18 speak for themselves. BANA denies the remaining allegations of Paragraph 18 and demands strict proof thereof.

19. BANA denies the allegations of Paragraph 19 and demands strict proof thereof.

UPDATED REQUEST FOR RELIEF

20. BANA denies that Plaintiffs are entitled to the requested relief or any relief whatsoever.

21. BANA denies the allegations of Paragraph 21 and demands strict proof thereof. BANA further denies that Plaintiffs are entitled to the requested relief or any relief whatsoever.

22. BANA denies that Plaintiffs are entitled to the requested relief or any relief whatsoever.

DEMAND FOR JURY TRIAL

23. The allegations of Paragraph 23 constitute legal conclusions to which no response is required.

AFFIRMATIVE DEFENSES

BANA asserts the following additional defenses. Discovery and investigation of this case is not yet complete, and BANA reserves the right to amend this Answer by adding, deleting, or amending defenses as may be appropriate. In further answer to the Amended Complaint, and by way of additional defenses, BANA avers as follows:

FIRST DEFENSE

BANA avers the affirmative defenses of estoppel, waiver, release, settlement, accord and satisfaction, assumption of risk, ratification, acquiescence, mistake, consent, notice, setoff, recoupment, contributory negligence, failure of consideration, laches, and no damages.

SECOND DEFENSE

BANA denies that Plaintiffs have been injured or damaged by BANA and demands strict proof thereof. BANA further denies that Plaintiffs are entitled to any of the relief sought in the Amended Complaint.

THIRD DEFENSE

Plaintiffs failed to mitigate their damages.

FOURTH DEFENSE

BANA pleads the general issue.

FIFTH DEFENSE

Plaintiffs are not entitled to the recovery of any damages, including attorneys' fees, punitive damages, and costs of this action.

SIXTH DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted.

SEVENTH DEFENSE

Plaintiffs fail to plead with sufficient particularity as required by the applicable rules.

EIGHTH DEFENSE

BANA did not breach any duty or obligation allegedly owed to Plaintiffs.

NINTH DEFENSE

Plaintiffs' claims are barred because BANA performed its obligations.

TENTH DEFENSE

Plaintiffs lack standing to bring some or all of their claims.

ELEVENTH DEFENSE

Some or all of Plaintiffs' claims are barred by the statute of frauds.

TWELFTH DEFENSE

BANA is not the proximate or actual cause of any damages suffered or incurred by Plaintiff.

THIRTEENTH DEFENSE

The Amended Complaint is barred by payment and the doctrine of unclean hands.

FOURTEENTH DEFENSE

Plaintiffs' own negligence proximately caused the damages which they claim.

FIFTEENTH DEFENSE

Plaintiffs fail to meet the conditions precedent for some or all of their claims.

SIXTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the parol evidence rule.

SEVENTEENTH DEFENSE

BANA does not owe any duties to Plaintiff relating to the matters alleged in the Amended Complaint.

EIGHTEENTH DEFENSE

Some or all of the claims asserted are barred by express written disclosures signed or received by Plaintiffs.

NINETEENTH DEFENSE

Some or all of the claims asserted are barred by the economic loss doctrine.

TWENTIETH DEFENSE

Some or all of the claims are barred by the statute of limitations.

TWENTY-FIRST DEFENSE

Plaintiffs' claims are, in whole or in part, preempted by applicable law.

TWENTY-SECOND DEFENSE

Plaintiffs' claims are barred by the terms and conditions of the contracts that are the subject of this lawsuit.

TWENTY-THIRD DEFENSE

Plaintiffs' cannot recover punitive damages against BANA because such an award would violate BANA's constitutional rights protected under the Constitution of the United States.

TWENTY-FOURTH DEFENSE

Plaintiffs are not entitled to the recovery of any attorney's fees.

TWENTY-FIFTH DEFENSE

Plaintiffs' lack standing to bring some or all of their claims. Document

TWENTY-SIXTH DEFENSE

Plaintiffs' claims are subject to set off and recoupment of the unpaid amounts owed on the subject note and mortgage, including, but not limited to, all principal, interest, fees, and costs.

Respectfully submitted this 4th day of March, 2015.

/s/ Sean C. Wagner

Sean C. Wagner (OBA No. 31254)
BRADLEY ARANT BOULT CUMMINGS LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2119
Phone: (205) 521-8403
Fax: (205) 488-6403
swagner@babco.com

ATTORNEY FOR DEFENDANT BANK OF AMERICA, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2015, I electronically submitted the foregoing document to the Clerk of the Court and that a copy of the foregoing was served upon the following via U.S. First Class Mail, postage pre-paid:

Thomas F. West
Diana M. West
P.O. Box 228
Vian, Oklahoma 74962
Pro Se Plaintiffs

/s/ Sean C. Wagner

OF COUNSEL